

Official Form 17A (12/14)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----;
In Re Eric H. Richmond,

Debtor

Chapter 13

No. 14-41678 (cec)

-----;
[Caption as in Form 16A, 16B, or 16D, as appropriate]

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):

Eric H. Richmond

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff

☐ Defendant

☐ Other (describe) _____

For appeals in a bankruptcy case and not in an adversary proceeding.

☒ Debtor

Creditor

Trustee

Other (describe) _____

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from: _____

OPINION THAT APPEAL NOT TAKEN IN GOOD FAITH

2. State the date on which the judgment, order, or decree was entered:

December 22, 2015

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: PB #7, LLC

Attorney: Glenn P Warmuth
Stim and Warmuth
2 Eighth Street
Farmingville, New York, 11738
631-732-2000

2. Party: Michael Macco
Trustee

Attorney: Michael J. Macco
2950 Expy Dr S #109,
Islandia, NY 11749
Phone: (631) 479-2869

Official Form 17A (12/14)

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.


- ☐ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

Signature of attorney for appellant(s) (or
appellant(s) if not represented by an attorney)

Name, address, and telephone number of attorney
(or appellant(s) if not represented by an attorney):

Date: January 22, 2016


Eric Richmond, Pro Se
2107 Regent Place
Brooklyn, NY 11226
646 256 9613

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Case No. 14-41678-cec

Eric H. Richmond,

Chapter 13

Debtor.
-----X

CERTIFICATION

On October 30, 2015, Eric H. Richmond (the “Debtor”), filed a notice of appeal [ECF Doc. No. 384]¹ (the “Appeal”) of an order entered September 11, 2015 [ECF Doc. No. 357] denying the Debtor’s motion to vacate [ECF Doc. No. 316] the decision [ECF Doc. No. 55], order [ECF Doc. No. 56], and amended order [ECF Doc. No. 71] lifting the automatic stay (together, the “Lift Stay Order”) with respect to the property located at 227-231 Fourth Avenue, Brooklyn, New York (the “Property”). The Debtor also filed an application to proceed in the district court without the prepayment of fees (the “Application”) [ECF Doc. No. 384-1].

On December 17, 2015, the United States District Court, Eastern District of New York (Cogan, J.) referred the Application to this Court for a determination whether the appeal is taken in good faith pursuant to 28 U.S.C. § 1915 [ECF Doc. No. 411]. This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157(a) and 1334. See In re Melendez, 153 B.R. 386 (Bankr. D. Conn. 1993).

This is the Debtor’s second appeal related to the Lift Stay Order in this case.² The Debtor previously appeal the Lift Stay Order as well as the denial of four motions to reconsider. Eric H.

¹ All references to “ECF Doc. No.” refer to the docket in this case, case number 14-41678, unless otherwise specified.

² The Debtor is also the principal of 231 Fourth Avenue Lyceum, LLC (“Lyceum”). Lyceum owns the Property and filed a previous bankruptcy case in this Court (Case No. 13-42125). Lyceum previously appealed an order in its case lifting the stay with respect to the property. See Amended Notice of Appeal, Case No. 13-42125, ECF Doc. No. 81. That appeal was dismissed on December 5, 2015. 231 Fourth Avenue Lyceum, LLC v. PB #7, LLC, Case No. 14-cv-2860 (WFK) (E.D.N.Y. Dec. 5, 2014).


Richmond v. P.B. #7, LLC, Case No. 14-cv-7112 (BMC), (E.D.N.Y. Feb. 25, 2015). That appeal was dismissed on February 25, 2015 as moot because the Property had already been sold. Id. Judge Cogan further found that the sale could not be undone because Lyceum had forfeited its right to challenge the order lifting the stay in its case by failing to perfect its appeal. Id. The Debtor, who had no ownership interest in the property, could not use his appeal “to obtain for Lyceum that which it cannot obtain for itself.” Id.

In the Appeal, the Debtor seeks once again to challenge the Lift Stay Order. The Property, however, has already been sold. Nothing can be accomplished by vacating the Lift Stay Order at this point. Thus, the Appeal is moot. Further, the Debtor has had ample opportunity to challenge the Lift Stay Order. It has been the subject of numerous motions to reconsider, reargue, and vacate and has already been appealed once. Both this Court and the District Court have heard the Debtor’s arguments and found them lacking. As a result, the Appeal is groundless, meritless, and without foundation.

Because the Appeal is frivolous, this Court certifies that the Appeal is not taken in good faith pursuant to 28 U.S.C. § 1915.

**Dated: Brooklyn, New York
December 21, 2015**




Carla E. Craig
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I certify that on January 29, 2016, I served the foregoing
NOTICE OF APPEAL dated January 22, 2016 via the regular
United States mail on the following:

Glenn P. Warmuth, Esq.
Stim & Warmuth, P.C.
2 Eighth Street
Farmingdale, NY 11738

Michael Macco - Trustee
2950 Expy Dr S #109
Islandia, NY 11749

Dated January 29, 2016

By: 

ERIC RICHMOND
Debtor, PRO SE
2107 Regent Place
Brooklyn, NY 11226